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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,498	08/01/2003	James M. Keitges		4406
31083	7590	12/15/2004		EXAMINER
THOMTE, MAZOUR & NIEBERGALL, L.L.C. 2120 S. 72ND STREET, SUITE 1111 OMAHA, NE 68124			MEREK, JOSEPH C	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 12/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/632,498	KEITGES, JAMES M.
Examiner	Art Unit	
Joseph C. Merek	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 18 October 2004.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-38 is/are pending in the application.  
4a) Of the above claim(s) 9-11 and 16-38 is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-8 and 12-15 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/03/03.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_

***Election/Restrictions***

Claims 9-12 and 19-38 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 10/18/04.

Applicant notes that the examiner did not include Figs. 1 and 5 with group 1 and did not include the Figs. with any group. The examiner did not include Figs. 1 and 5 with the group I, Figs. 2-4 since the written description does not state that they belong together.

The written description states the following with regard to the drawings.

**BRIEF DESCRIPTION OF THE DRAWINGS**

Figure 1 is a perspective view of one embodiment of the food container of the present invention;

Figure 2 is a perspective view of another embodiment of the food container of the present invention;

Figure 3 is a cutaway perspective view of the food container of Figure 2;

Figure 4 is a cutaway side elevation view of the food container of Figure 2 as the same may be substantially filled with a temperature storing medium,

Figure 5 is a cutaway side elevation view of another embodiment of the food

From the above it is clear that Figs. 2-3 belong together as a group and that Figs. 1 and 5 each represent a different embodiment. Therefore the examiner has amended the groups as set forth below:

Group A, Figs. 2-4;

Group B, Fig. 6;

Group C, Figs. 7 and 8;

Group D, Figs. 9 and 11;

Group E, Fig. 1;

Group F, Fig. 5.

The examiner has reviewed the written description as well as the original claims to see if there is support for the lid belonging with Group I, Figs. 2-4. The examiner cannot find any support in the written description to include Fig. 1 or Fig. 5 with Figs. 2-4. Fig. 5 requires the lid but does not show bowl (30) as seen in Figs. 2-4. Figs. 2-4 have the bowl that is not shown or disclosed to be with Fig. 5. Since the original claims never combined the lid with the bowl, Fig. 5 is a separate group as noted above. It appears that Fig. 1 does not have the depression required in Fig. 2-4. Fig. 1 will not be included with Figs. 2-4 since the written description (as seen above) stated that Fig. 2 is another embodiment of the food container.

Therefore claims 16-18 are hereby withdrawn as being drawn to a nonelected invention. Claims 1-8 and 13-15 represent the elected embodiment of Figs. 2-4 and will be examined. Claims 9-12 and 16-38 are withdrawn and will not be examined.

***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 and 12-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Paquin (US 3,413,820). Regarding claim 1, see Fig. 2 where the claimed structure is shown. 23 is the temperature storing medium. 32 is the expansion area. Regarding claim 2, the opening is 33. Regarding claim 3, the cap is 34. Regarding claim 4, the location of 32 substantially prevents the temperature storing medium from entering since it is raised from 31. Regarding claims 5-7, 32 forms the support for the container. Regarding claim 8, the opening 33 is formed closely adjacent to the support 32. Regarding claim 12-15, see Fig. 2 where the depression is shown at 40, which holds the bowl 42. The depression is shaped and sized to hold food. This limitation does not require any structure that is not in the reference.

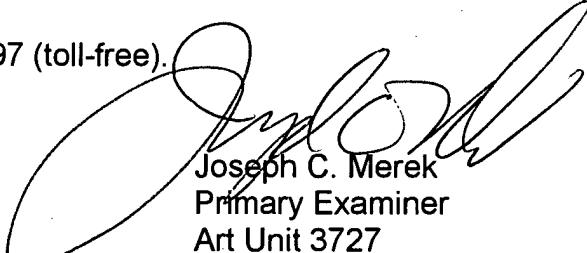
***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mock (US 1,771,186), Peterson (US 2,215,274), and Devlin (US 3,715,895) are all cited for teaching containers having temperature storing medium.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is 571 272-4542. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (571) 272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Joseph C. Merek  
Primary Examiner  
Art Unit 3727